

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF TEXAS  
AUSTIN DIVISION

KEVIN CLARKE, ET AL.,	§	NO. 1:22-CV-909-DAE
	§	
Plaintiffs,	§	
	§	
vs.	§	
	§	
COMMODITY FUTURES TRADING	§	
COMMISSION,	§	
	§	
Defendant.	§	
_____	§	

ORDER ENTERING A PRELIMINARY INJUNCTION IN LIGHT OF FIFTH  
CIRCUIT’S REVERSAL AND REMAND

The matter before the Court is the Fifth Circuit Court of Appeal’s July 21, 2023 judgment in this case which reversed the opinion of the District Judge originally assigned to this action,<sup>1</sup> and remanded this case with instructions to enter a preliminary injunction pending consideration of Plaintiffs’ claims in this case. Clarke v. Commodity Futures Trading Co., 74 F.4th 627 (5th Cir. 2023). On September 12, 2023, the Fifth Circuit issued its mandate. (Dkt. # 42.) In accordance with the Fifth Circuit’s opinion, the Court hereby **GRANTS** Plaintiffs’ request for a preliminary injunction pending consideration of the merits of the

---

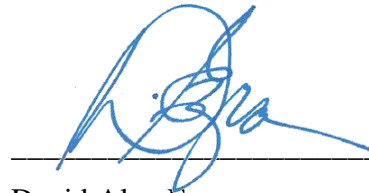
<sup>1</sup> The case was not transferred to the undersigned until after the parties had appealed. (Dkt. # 37.)

claims in this case. Plaintiffs are **ORDERED** to file an updated proposed preliminary injunction Order which addresses the relief requested in light of the DMO's March 2023 letter voiding and withdrawing the August 2022 no-action recission letter.

It is further **ORDERED** that the parties must submit a proposed scheduling order to control the remaining deadlines in this case **within 21 days of the date of this Order.**

**IT IS SO ORDERED.**

**DATED:** Austin, Texas, September 13, 2023.

A handwritten signature in blue ink, appearing to read 'David Alan Ezra', is written over a horizontal line.

David Alan Ezra  
Senior United States District Judge